

IV. Optional Technical Assistance Checklist <sup>1</sup> – Eligibility Requirements found in PL 108-446	
PL 108-446	Description of Changes
<b>20 U.S.C. 1412. STATE ELIGIBILITY.</b>	
(10) CHILDREN IN PRIVATE SCHOOLS-	Adds a reference to private schools located in the LEA when calculating proportionate share.. Adds requirements to consult about thorough and complete child find; use State and local funds to supplement and not supplant proportionate amount; and keep records on numbers of children evaluated and number found eligible. Adds additional consultation requirements on child find, on determination of proportionate share, on consultation process, and on how services will be delivered. Requires LEA to obtain written affirmation from private school representatives that timely and meaningful consultation occurred. Gives private school representatives the right to complain to the SEA and, if dissatisfied with the SEA response, to appeal to the Secretary. Adds requirement that services be 'secular, neutral and nonideological' and other requirements.
(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS-	
(i) IN GENERAL- To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):	
(I) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.	
(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.	
(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.	
(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.	See above.
(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.	
(ii) CHILD FIND REQUIREMENT-	

<sup>1</sup> This checklist is provided to assist States in the completion of OMB Information Collection 1820-0030. Use of the checklist is optional.  
Optional Technical Assistance Checklist for Part B Annual State Application: FFY 2005

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<p>(I) IN GENERAL- The requirements of paragraph (3) (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools.</p> <p>(II) EQUITABLE PARTICIPATION- The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.</p> <p>(III) ACTIVITIES- In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency's public school children.</p> <p>(IV) COST- The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).</p> <p>(V) COMPLETION PERIOD- Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.</p> <p>(iii) CONSULTATION- To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding--</p>	
<p>(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;</p> <p>(II) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;</p> <p>(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;</p> <p>(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including</p>	See above.

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a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and	See above.
(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.	
(iv) WRITTEN AFFIRMATION- When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.	
(v) COMPLIANCE- (I) N GENERAL- A private school official shall have the right to submit a complaint to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.	
(II) PROCEDURE- If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.	
(vi) PROVISION OF EQUITABLE SERVICES- (I) DIRECTLY OR THROUGH CONTRACTS- The provision of services pursuant to this subparagraph shall be provided--	

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(aa) by employees of a public agency; or	
(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.	
(II) SECULAR, NEUTRAL, NONIDEOLOGICAL- Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.	
(vii) PUBLIC CONTROL OF FUNDS- The control of funds used to provide special education and related services under this subparagraph, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer the funds and property.	
(B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES-  (i) IN GENERAL- Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.	
(ii) STANDARDS- In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served have all the rights the children would have if served by such agencies.	
(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY-  (i) IN GENERAL- Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.	
(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT- If the parents of a child with a disability, who previously received special education and related services	

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under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.	
(iv) EXCEPTION- Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement--	Separates out the exceptions to the reduction in reimbursements that apply automatically if found and those that are discretionary on the part of a court or hearing officer.
(I) shall not be reduced or denied for failure to provide such notice if--	
(aa) the school prevented the parent from providing such notice;	
(bb) the parents had not received notice, pursuant to 20 U.S.C. 1415, of the notice requirement in clause (iii)(I); or	
(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and	
(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if--	
(aa) the parent is illiterate or cannot write in English; or	
(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.	
(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION-	Adds requirement that SEA carry out IDEA with regard to homeless children in a manner consistent with the McKinney-Vento Act. Link to the McKinney-Vento Act is: <a href="http://www.naehcy.org/mvact.doc">http://www.naehcy.org/mvact.doc</a>
(A) IN GENERAL- The State educational agency is responsible for ensuring that--	
(i) the requirements of this part are met;	
(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency--	
(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and	
(II) meet the educational standards of the State educational agency; and	
(iii) in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.	

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(B) LIMITATION- Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.	
(C) EXCEPTION- Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.	
(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.	Adds a requirement that if the State assigns responsibility for services through a method other than a statute, regulation or signed agreement, that the Secretary approve that other method.
(14) PERSONNEL QUALIFICATIONS- (A) IN GENERAL- The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.	[NOTE: CSPD eliminated (prior 20 U.S.C. 1412(a)(14))] Adds requirement that qualifications ensure that personnel <i>have the content knowledge and skills to serve children with disabilities</i> .
(B) RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS- The qualifications under subparagraph (A) include qualifications for related services personnel and paraprofessionals that--	Provides that related services and paraprofessional qualifications must be consistent with State-recognized certification, licensing, registration or other comparable requirements that apply to the profession or discipline and that those personnel have not had certification or licensure requirements waived on a temporary, emergency or provisional basis and allows paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation or written policy to be used to assist in the provision of services.
(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;	
(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and	
(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.	
(C) QUALIFICATIONS FOR SPECIAL EDUCATION TEACHERS- The qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school is highly	New requirement that each special education teacher meet the definition of “highly qualified” [in 20 U.S.C. 1401(10)] by the deadline established in 1119(a)(2) [by the end of the 2005-2006

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qualified by the deadline established in section 1119(a)(2) of the Elementary and Secondary Education Act of 1965.	school year].
(D) POLICY- In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.	New policy requirement providing that States shall have a policy that includes a requirement that LEAs take measurable steps to recruit, hire, retain and train highly-qualified personnel.
(E) RULE OF CONSTRUCTION- Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this paragraph shall be construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this part.	Provides that failure of personnel to meet these standards does not create a right of action or prevent a complaint to the SEA about staff qualifications.  [NOTE: Policy on shortages and highest requirements language are deleted (prior 20 U.S.C. 1412(a)(15)(B)(ii) and (C))]
(16) PARTICIPATION IN ASSESSMENTS-	Revised to specify that all children with disabilities participate in all general State- and district-wide assessment programs, and that States have guidelines on the provision of appropriate accommodations. Other changes to clarify that alternate assessments be aligned with State's challenging academic content and achievement standards, and to incorporate alternate assessments aligned to alternate achievement standards as permitted under ESEA.
(A) IN GENERAL- All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.	
(B) ACCOMMODATION GUIDELINES- The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.	
(C) ALTERNATE ASSESSMENTS-	
(i) IN GENERAL- The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.	
(D) REPORTS- The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:	
(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.	

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<p>(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).</p> <p>(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).</p> <p>(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.</p> <p>(E) UNIVERSAL DESIGN- The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.</p>	
<p>(22) SUSPENSION AND EXPULSION RATES-</p> <p>(A) IN GENERAL- The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--</p> <p>(i) among local educational agencies in the State; or</p> <p>(ii) compared to such rates for nondisabled children within such agencies.</p> <p>(B) REVIEW AND REVISION OF POLICIES- If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this title.</p>	<p>Revises the provision to require that data on suspension and expulsion rates also be disaggregated by race and ethnicity.</p>
<p>(23) ACCESS TO INSTRUCTIONAL MATERIALS-</p> <p>(A) IN GENERAL- The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register.</p> <p>(B) RIGHTS OF STATE EDUCATIONAL AGENCY- Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National</p>	<p>New provision. Requires States to adopt the National Instructional Materials Accessibility Standard for providing instructional materials to blind and other persons with print disabilities in a timely manner after publication of the Standard in the Federal Register. States are not required to coordinate with the National Instructional Materials Access Center, but if they do not, they must provide an assurance to the Secretary that they will provide instructional materials to blind and print disabled person in a timely</p>



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Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.	manner. Specific rules apply to States that do coordinate with the Center. To the maximum extent possible, SEAs must work with the State agency for assistive technology in carrying out these requirements.
(C) PREPARATION AND DELIVERY OF FILES- If a State educational agency chooses to coordinate with the National Instructional Materials Access Center, not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to--	
(i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or	
(ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.	
(D) ASSISTIVE TECHNOLOGY- In carrying out this paragraph, the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.	
(E) DEFINITIONS- In this paragraph:	
(i) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER- The term 'National Instructional Materials Access Center' means the center established pursuant to 20 U.S.C. 1474(e).	
(ii) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD- The term 'National Instructional Materials Accessibility Standard' has the meaning given the term in 20 U.S.C. 1474(e)(3)(A).	
(iii) SPECIALIZED FORMATS- The term 'specialized formats' has the meaning given the term in 20 U.S.C. 1474(e)(3)(D).	
(24) OVERIDENTIFICATION AND DISPROPORTIONALITY- The State has in effect, consistent with the purposes of this title and with 20 U.S.C. 1418(d), policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 20 U.S.C. 1401.	
(25) PROHIBITION ON MANDATORY MEDICATION-	New provision. States and local agency personnel are prohibited

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(A) IN GENERAL- The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of 20 U.S.C. 1414, or receiving services under this title.	from requiring a child to obtain a prescription for a controlled substance as a condition of attending school, receiving an evaluation, or receiving services under the IDEA. Does not prohibit teachers or other school personnel from <i>sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school or regarding the need for an evaluation for special education or related services.</i>
(B) RULE OF CONSTRUCTION- Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).	
(C) ADJUSTMENT TO LOCAL FISCAL EFFORT IN CERTAIN FISCAL YEARS- (i) AMOUNTS IN EXCESS- Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under 20 U.S.C. 1411(f) exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.	Replaces prior provision regarding use of certain Federal funds with a new provision that an LEA may reduce the amount of local fiscal effort by not more than 50% of any increase in the amount of its Federal allocation as long as the LEA uses an equal amount of local funds to carry out activities authorized by the ESEA. SEAs are required to prohibit LEAs from using this authority if the LEA is unable to establish and maintain programs of FAPE or if the LEA is the subject of an SEA enforcement action under 20 U.S.C. 1416. IDEA funds that an LEA uses for early intervention services under 20 U.S.C. 1413(f) count toward the total local fiscal effort that an LEA may reduce.
(ii) USE OF AMOUNTS TO CARRY OUT ACTIVITIES UNDER ESEA- If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965.	
(iii) STATE PROHIBITION- Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under 20 U.S.C. 1416, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.	
(iv) SPECIAL RULE- The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).	
(4) PERMISSIVE USE OF FUNDS- (A) USES- Notwithstanding paragraph (2)(A) or 20 U.S.C. 1412(a)(17)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:	Provides for additional uses of funds without regard to excess costs and commingling requirements for early intervening services under 20 U.S.C. 1413(f) and to establish and implement cost or risk-sharing funds, consortia or cooperatives for the LEA or groups

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(i) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN- For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.	of LEAs to pay for high cost special education and related services. Also provides that LEAs can use funds to purchase technology for record keeping, data collection and related case management activities of teachers and related services personnel as needed for case management of IEP services. Authority to use up to 5% of the funds for coordinated services is deleted.
(ii) EARLY INTERVENING SERVICES- To develop and implement coordinated, early intervening educational services in accordance with subsection (f).	
(iii) HIGH COST EDUCATION AND RELATED SERVICES- To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.	
(B) ADMINISTRATIVE CASE MANAGEMENT- A local educational agency may use funds received under this part to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.	
(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS- In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency--	Language is added to this provision to specify that charter schools of LEAs be treated the same as other schools of the LEAs regarding provision of on-site services and distribution of funds.
(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and	
(B) provides funds under this part to those charter schools--	
(i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and	
(ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law.	
(6) PURCHASE OF INSTRUCTIONAL MATERIALS- (A) IN GENERAL- Not later than 2 years after the date of enactment of the Individuals with	New provision. Not later than 2 years after enactment of IDEA 2004, an LEA that chooses to coordinate with the National Instructional Materials Access Center must acquire the print

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Disabilities Education Improvement Act of 2004, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as a State educational agency acquires print instructional materials under 20 U.S.C. 1412(a)(23).	materials in the same manner and subject to the same conditions as a SEA under 20 U.S.C. 1412(a)(23). LEAs are not required to coordinate with the Center, and if they do not, they must provide an assurance to the SEA that they will provide instructional materials to blind or print disabled persons in a timely manner.
(B) RIGHTS OF LOCAL EDUCATIONAL AGENCY- Nothing in this paragraph shall be construed to require a local educational agency to coordinate with the National Instructional Materials Access Center. If a local educational agency chooses not to coordinate with the National Instructional Materials Access Center, the local educational agency shall provide an assurance to the State educational agency that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.	
(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES- The local educational agency shall cooperate in the Secretary's efforts under section 1308 of the Elementary and Secondary Education Act of 1965 to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.	New provision. LEAs must cooperate with the Secretary's efforts under section 1308 of the ESEA to ensure linkage of records pertaining to migratory children with disabilities for the purpose of exchanging among States health and educational information on these children.
(B) REQUEST FOR INITIAL EVALUATION- Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.	New provision. Either a parent, SEA or other State agency or LEA can request an initial evaluation.
(C) PROCEDURES- (i) IN GENERAL- Such initial evaluation shall consist of procedures-- (I) to determine whether a child is a child with a disability (as defined in 20 U.S.C. 1401) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and	Establishes a new Federal default 60-day timeline from receipt of parent consent for initial evaluation until the initial evaluation must be conducted, unless a State has adopted a different timeline.
(II) to determine the educational needs of such child.	
(ii) EXCEPTION- The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if--	Provides that the timeline for initial evaluation will not apply in two situations – if the child moves to a new school district after consent is given but before the evaluation can be completed, as long as the new district is <i>making sufficient progress</i> to complete the evaluation and the parent and LEA agree to a specific time when the evaluation shall be completed, or if the parent repeatedly fails or refuses to produce the child for evaluation.
(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in 20 U.S.C. 1401), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt	

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completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or	
(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.	
(II) CONSENT FOR SERVICES- An agency that is responsible for making a free appropriate public education available to a child with a disability under this part shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.	New provision. Clarifies that public agencies must seek parental consent before providing special education services, in addition to seeking consent before evaluation.
(ii) ABSENCE OF CONSENT- (I) FOR INITIAL EVALUATION- If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in 20 U.S.C. 1415, except to the extent inconsistent with State law relating to such parental consent.	New provision. Allows public agencies to use due process to seek authority to do an evaluation if parents refuse to consent for the evaluation or fail to respond to requests for consent for evaluation, but provides that agencies may not use due process to seek to provide services if parents have failed to provide consent for services. If parents refuse consent for services, the agency will not be considered to have failed to provide FAPE to the child and shall not be required to convene IEP meetings about the child.
(II) FOR SERVICES- If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in 20 U.S.C. 1415.	
(III) EFFECT ON AGENCY OBLIGATIONS- If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent--	
(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and	
(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.	
(iii) CONSENT FOR WARDS OF THE STATE- (I) IN GENERAL- If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed	New provision. Provides that agencies shall make reasonable efforts to obtained informed consent prior to an initial evaluation if the child is a ward of the State and not living with the child's

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consent from the parent (as defined in 20 U.S.C. 1401) of the child for an initial evaluation to determine whether the child is a child with a disability.	parents, but is not required to obtain consent if the agency, despite reasonable efforts, cannot locate the child's parents; the rights of the parents have been terminated under State law; or the rights of the parent to make educational decisions has been subrogated under State law and consent for the initial evaluation has been given by an individual appointed by the judge to represent the child.
(II) EXCEPTION- The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if--	
(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;	
(bb) the rights of the parents of the child have been terminated in accordance with State law; or	
(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.	
(E) RULE OF CONSTRUCTION- The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.	New provision. Screenings of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered an evaluation for eligibility for special education and related services.
(2) REEVALUATIONS-	Revised to provide that reevaluations occur if the LEA determines that the educational and related services needs, including improved academic achievement and functional performance of the child warrant or if the child's parents or teacher request one, and limits reevaluations to not more than once a year, unless parents and LEA agree otherwise and at least once every 3 years, unless parents and LEA agree otherwise.
(A) IN GENERAL- A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)--	
(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or	
(ii) if the child's parents or teacher requests a reevaluation.	
(B) LIMITATION- A reevaluation conducted under subparagraph (A) shall occur--	
(i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and	
(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.	
(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining--	Revised to specify that the evaluation gather academic information about the child.

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<p>(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;</p> <p>(iii) are used for purposes for which the assessments or measures are valid and reliable;</p> <p>(iv) are administered by trained and knowledgeable personnel; and</p> <p>(v) are administered in accordance with any instructions provided by the producer of such assessments;</p> <p>(B) the child is assessed in all areas of suspected disability;</p> <p>(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and</p> <p>(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.</p>	<p>Revised to provide that evaluations be done in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer [prior law said evaluation must be done in the 'native language or other mode of communication' of the child]; to apply standards of validity, reliability, and administration by trained personnel in accordance with applicable instructions by assessment producers to all assessment procedures [prior law applied these standards only to standardized tests]; and to require coordination in the administration of assessments between school districts if a child moves from one district to another in the same academic year.</p>
<p>(A) the determination of whether the child is a child with a disability as defined in 20 U.S.C. 1401(3) and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and</p> <p>(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.</p>	<p>Expanded to include a determination of the educational needs of the child.</p>
<p>(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965);</p> <p>(B) lack of instruction in math; or</p> <p>(C) limited English proficiency.</p>	<p>Revised to include a specific reference to the <i>essential components of reading instruction</i> as defined in the Reading First program.</p> <p>Section 1208(3) of the ESEA states the term essential components of reading instruction' means explicit and systematic instruction in — (A) phonemic awareness; (B) phonics; (C) vocabulary development; (D) reading fluency, including oral reading skills; and (E) reading comprehension strategies.</p>
<p>(6) SPECIFIC LEARNING DISABILITIES</p> <p>(A) IN GENERAL.- Notwithstanding 20 U.S.C. 1407(b), when determining whether a child has a specific learning disability as defined in 20 U.S.C. 1401, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or</p>	<p>New provision. Provides that LEAs are not required to consider whether a child has a severe discrepancy between achievement and intellectual ability when determining whether a child has a learning disability and permitting LEAs to use a response to a research-based intervention as a part of an evaluation process.</p>

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mathematical reasoning.	
(B) ADDITIONAL AUTHORITY.- In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).	
(i) whether the child is a child with a disability as defined in 20 U.S.C. 1401(3), and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;	Revised to add references to educational needs of the child.
(ii) the present levels of academic achievement and related developmental needs of the child;	Revised to require consideration of whether additional data are needed about the child's present levels of <i>academic achievement and related developmental needs</i> [prior law referred to present levels of performance and educational needs].
(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED- If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency--	Revised to add reference to child's educational needs.
(A) shall notify the child's parents of--	
(i) that determination and the reasons for the determination; and	
(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and	Revised to expand the parent's right to receive an evaluation about the child's educational needs, in addition to whether the child continues to be a child with a disability.
(B) EXCEPTION-	New provision. Clarifies that an evaluation is not required before terminating a child's eligibility due to graduation with a regular diploma or due to exceeding the age of eligibility for FAPE. If a child's eligibility ends due to either of these circumstances, the LEA shall provide a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting postsecondary goals.
(i) IN GENERAL- The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.	
(ii) SUMMARY OF PERFORMANCE- For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.	
(l) a statement of the child's present levels of academic achievement and functional performance, including--	Revised to require a statement of present levels of <i>academic achievement and functional performance</i> [prior law referred to



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	present levels of educational performance].
(aa) how the child's disability affects the child's involvement and progress in the general education curriculum;	Revised to change general curriculum to <i>general education curriculum</i> .
(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;	Revised to require, for children with disabilities taking alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives [prior law required a statement of benchmarks or short-term objectives as a part of the statement of annual goals for all children with disabilities].
(II) a statement of measurable annual goals, including academic and functional goals, designed to--	Revised to refer to both academic and functional goals, to delete the requirement for the use of short-term objectives or benchmarks for all children with disabilities, and to refer to <i>general education curriculum</i> .
(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and	
(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;	Revised to require a statement of how the child's progress toward annual goals will be measured and when periodic reports on progress will be provided (such as quarterly or other periodic reports concurrent with regular report cards) [prior law referred to periodic reports at least as often as other parents are informed of progress].
(IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child--	Revised to provide that the statement of special education and related services and supplementary aids and services be <i>based on peer-reviewed research to the extent practicable</i> and to refer to <i>general education curriculum</i> .
(aa) to advance appropriately toward attaining the annual goals;	
(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and	
(VI) (aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with 20 U.S.C. 1412(a)(16)(A); and	Revised to refer to a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments, and if the IEP team determines that the child shall take an alternate assessment, a statement of why the

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(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why--	child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child.
(AA) the child cannot participate in the regular assessment; and	
(BB) the particular alternate assessment selected is appropriate for the child;	
(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter--	Replaces the two transition services requirements with one provision that, beginning not later than the IEP in effect when the child turns 16 and updated annually thereafter, the IEP include a statement of <i>appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, and the transition services (including courses of study) needed to assist the child in reaching those goals.</i>
(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;	
(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and	
(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority under 20 U.S.C. 1415(m).	Requires that the IEP include a statement that the child has been informed of rights transferring at the age of majority at least one year before rights transfer.
(ii) RULE OF CONSTRUCTION- Nothing in this section shall be construed to require--	Provides that nothing be construed to require that IEPs include more than what is explicitly provided for in 20 U.S.C. 1414 as well as the provision in prior law [at 20 U.S.C. 1414(e)] that an IEP team need not include information under a component of an IEP that is already included elsewhere in the IEP.
(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and	
(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.	
(ii) not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);	Revises the IEP team to include <i>not less than 1</i> regular education teacher and <i>not less than 1</i> special education teacher [prior law referred to "at least one" in both places.]
(iii) not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child;	
(C) IEP TEAM ATTENDANCE-	New provision. An IEP team member may be excused from attending a meeting if the parents and agency agree that the individual's attendance is not necessary because that member's curriculum area or related service is not being discussed.
(i) ATTENDANCE NOT NECESSARY- A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not	

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being modified or discussed in the meeting.	
(ii) EXCUSAL- A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--	New provisions. Permits a team member to be excused from attending an IEP meeting that involves a modification discussion of the member's curriculum area or related service if the parent (in writing) and agency agree to the excusal and the excused member submits written input prior to the meeting.
(I) the parent and the local educational agency consent to the excusal; and	
(II) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.	
(iii) WRITTEN AGREEMENT AND CONSENT REQUIRED- A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.	
(D) IEP TEAM TRANSITION- In the case of a child who was previously served under part C, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services.	New provision. The public agency, at the request of the parent, must invite the Part C service coordinator or other representative of the Part C program to the IEP meeting for a child transitioning from Part C to Part B services.
(B) PROGRAM FOR CHILD AGED 3 THROUGH 5- In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), the IEP Team shall consider the individualized family service plan that contains the material described in 20 U.S.C. 1436, and that is developed in accordance with this section, and the individualized family service plan may serve as the IEP of the child if using that plan as the IEP is--	Adds that the IEP team shall consider a child's IFSP when developing an appropriate program for a child transferring from the Part C program to the Part B program.
(i) consistent with State policy; and	
(ii) agreed to by the agency and the child's parents.	
(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS-	New provision. Requires that, for children transferring school districts within the same state, the new LEA provide FAPE, including services consistent with the previous district's IEP, in consultation with the parents, until the new LEA either adopts the prior IEP or develops a new IEP.
(i) IN GENERAL-	
(I) TRANSFER WITHIN THE SAME STATE- In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.	

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(II) TRANSFER OUTSIDE STATE- In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.	New provision. Requires that, for children transferring from one State to another, the new LEA provide FAPE, including services consistent with the previous district's IEP, in consultation with the parents, until the new LEA conducts an evaluation, and if needed, develops a new IEP.
(ii) TRANSMITTAL OF RECORDS- To facilitate the transition for a child described in clause (i)--	New provision. Requires that new LEAs <i>take reasonable steps to promptly obtain the child's records</i> and the 'old' district take reasonable steps to promptly respond to those requests.
(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and	
(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.	
(3) DEVELOPMENT OF IEP-	No substantive change except the one immediately below.
(A) IN GENERAL- In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider--	
(i) the strengths of the child;	
(ii) the concerns of the parents for enhancing the education of their child;	
(iii) the results of the initial evaluation or most recent evaluation of the child; and	
(iv) the academic, developmental, and functional needs of the child.	Adds that the IEP team consider the academic, developmental, and functional needs of the child.
(D) AGREEMENT- In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.	New provision. Changes to the IEP, after the annual IEP meeting, can occur without a meeting, if the parents and LEA agree and develop a written document to amend or modify the IEP.
(E) CONSOLIDATION OF IEP TEAM MEETINGS- To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other	New provision. LEAs should encourage the consolidation of reevaluation meetings and other IEP meetings.

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IEP Team meetings for the child.	
(F) AMENDMENTS- Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.	New provision. Clarifies that amendments to IEPs can be made by the entire IEP team or by just the parent and LEA (as in (d)(e)(D)) and that the IEP can be amended, rather than completely redrafted, unless the parent requests a revised copy with the amendments incorporated.
(i) reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and	Revised to refer to general education curriculum rather than 'general curriculum' in prior law.
(ii) revises the IEP as appropriate to address--	
(I) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;	
(II) the results of any reevaluation conducted under this section;	
(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);	
(IV) the child's anticipated needs; or	
(V) other matters.	
(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER- A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.	
(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and	New provision. For a child who is a ward of the State, the surrogate parent may be appointed by the judge overseeing the child's care, provided that person meets the non-employee standard.
(ii) an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with this paragraph.	New provision. For an unaccompanied homeless youth, the local educational agency must appoint a surrogate parent. Section 745(6) of the McKinney-Vento Homeless Assistance Act states the term 'unaccompanied youth' includes a youth not in the physical custody of a parent or guardian.
(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.	New provision. Requires that the State make reasonable efforts to ensure appointment of a surrogate within 30 days after a determination that the child needs a surrogate.
(6) An opportunity for any party to present a complaint--	Revised to provide that <i>any party</i> has a right to a hearing [prior law

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(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and	guaranteed that right only to parents] and adds a new provision that a request for a hearing be filed within two years of when the parents or agency knew or should have known of the alleged violation, unless the State has an explicit timeline for presenting complaints under Part B.
(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.	
(7) (A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)--	Revises the content of this notice to refer to available contact information for homeless children and adds a new requirement that the party or their attorney must file the notice before a party can have a due process hearing.
(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and	
(ii) that shall include--	
(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;	
(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;	
(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and	
(IV) a proposed resolution of the problem to the extent known and available to the party at the time.	
(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).	
(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.	Revised to clarify that States must provide a model form to assist parents in filing a due process complaint and a due process complaint notice.

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(2) DUE PROCESS COMPLAINT NOTICE-  (A) COMPLAINT- The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).	New and detailed requirements that a due process complaint notice be considered to be sufficient unless the receiving party notifies the hearing officer and the complainant, within 15 days of receipt, that the notice does not meet the required content requirements; that an agency provide prior written notice within 10 days if the agency has not provided prior written notice about the issues in the complaint; that a non-complaining party respond within 10 days specifically addressing the issues in the complaint; that a hearing officer make a determination about sufficiency of the due process complaint notice within 5 days; that a complaint notice may be amended with the written consent of the other party and a resolution meeting; that a hearing officer can grant permission to amend a due process complaint notice, but not within 5 days of the due process hearing; and that the due process hearing timelines recommence upon the filing of an amended notice.
(B) RESPONSE TO COMPLAINT-	
(i) LOCAL EDUCATIONAL AGENCY RESPONSE-	
(I) IN GENERAL- If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include--	
(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;	
(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;	
(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and	
(dd) a description of the factors that are relevant to the agency's proposal or refusal.	
(II) SUFFICIENCY- A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.	
(ii) OTHER PARTY RESPONSE- Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.	
(C) TIMING- The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.	
(D) DETERMINATION- Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the	

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parties in writing of such determination.	
(E) AMENDED COMPLAINT NOTICE-	
(i) IN GENERAL- A party may amend its due process complaint notice only if--	
(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or	
(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.	
(ii) APPLICABLE TIMELINE- The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).	Revised to provide that procedural safeguards notice be given to parents only one a year, except that a copy must also be given to parents on initial referral, or a parental request, for evaluation, the initial filing of a due process hearing request, and when requested by the parent.
(d) PROCEDURAL SAFEGUARDS NOTICE-	
(1) IN GENERAL-	
(A) COPY TO PARENTS- A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents--	
(i) upon initial referral or parental request for evaluation;	
(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and	A new provision noting that a local educational agency may place a current copy of the procedural safeguards on its Internet website.
(iii) upon request by a parent.	
(B) INTERNET WEBSITE- A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.	Revised to add elements related to the time period for filing due process complaints, the agency's opportunity to resolve complaints, the availability of mediation, and the time period for filing lawsuits.
(2) CONTENTS- The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to--	
(A) independent educational evaluation;	
(B) prior written notice;	
(C) parental consent;	



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(D) access to educational records;	
(E) the opportunity to present and resolve complaints, including--	
(i) the time period in which to make a complaint;	
(ii) the opportunity for the agency to resolve the complaint; and	
(iii) the availability of mediation;	
(F) the child's placement during pendency of due process proceedings;	
(G) procedures for students who are subject to placement in an interim alternative educational setting;	
(H) requirements for unilateral placement by parents of children in private schools at public expense;	
(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;	
(J) State-level appeals (if applicable in that State);	
(K) civil actions, including the time period in which to file such actions; and	
(L) attorneys' fees.	
(e) MEDIATION- (1) IN GENERAL- Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.	Revised to require that mediation be available to resolve any dispute [prior law only required mediation to be available to resolve matters that were the subject of a due process hearing request].
(F) WRITTEN AGREEMENT- In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that--	New provision. Requires that mediation agreements be in writing, signed by both the parents and agency representative, include a clause that discussions during mediation remain confidential and not be used as evidence in subsequent due process hearings or court actions, and that the agreements be enforceable in any State court of competent jurisdiction or in Federal district court.
(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;	
(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and	
(iii) is enforceable in any State court of competent jurisdiction or in a district court of the	

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United States.	
(G) MEDIATION DISCUSSIONS- Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.	
(f) IMPARTIAL DUE PROCESS HEARING- (1) IN GENERAL- (A) HEARING- Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.	Revised to clarify that either the parents or the LEA can request a due process hearing.
(B) RESOLUTION SESSION- (i) PRELIMINARY MEETING- Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint--	New provision. Requires that, prior to a due process hearing, the LEA convene a meeting with the parents and the relevant member(s) of the IEP team with specific knowledge of the facts in the complaint within 15 days of receipt of the complaint, to discuss and attempt to resolve the complaint.
(l) within 15 days of receiving notice of the parents' complaint;	
(II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;	
(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and	
(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).	New provision. The meeting must include someone from the agency with decision-making authority on behalf of the agency and may not include an LEA attorney unless the parents bring an attorney. The parties may agree in writing to waive the meeting or agree to use mediation.
(ii) HEARING- If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.	
(iii) WRITTEN SETTLEMENT AGREEMENT- In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is--	New provision. If there is a resolution, the parties shall execute a written, signed document that is enforceable in any State court of competent jurisdiction or in Federal district court.

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(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and	
(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.	
(iv) REVIEW PERIOD- If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.	New provision. A party can void a written agreement within 3 business days.
(3) LIMITATIONS ON HEARING-	Revised to add requirements that a hearing officer cannot have personal or professional interests that conflict with the person's objectivity; possess knowledge of and the ability to understand the statute, regulations and court interpretations of the law and regulations; possess the knowledge and ability to conduct hearings in accordance with standard legal practice; and possess the knowledge and ability to render and write decisions in accordance with standard legal practice.
(A) PERSON CONDUCTING HEARING- A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum--	
(i) not be--	
(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or	
(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;	
(ii) possess knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State courts; standard legal practice; and	
(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate,	
(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.	
(B) SUBJECT MATTER OF HEARING- The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.	New provision. Requires that a party requesting a due process hearing cannot raise issues in a hearing that were not raised in the due process complaint notice, unless the other party agrees.
(C) TIMELINE FOR REQUESTING HEARING- A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.	New provision. Creates a Federal default 2-year time limit, from when the parent or agency knew or should have known of the alleged violation, to file a request for a due process hearing, that applies unless the State has established an explicit timeline for requesting due process under Part B.
(D) EXCEPTIONS TO THE TIMELINE- The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to--	New provision. The timeline shall not apply to a parent if the parent was prevented from filing by <i>specific misrepresentations by</i>

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(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or	<i>the [LEA] that it had resolved the problem or the LEA withheld information that the parent had a right to under Part B.</i>
(ii) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent.	
(E) DECISION OF HEARING OFFICER-	New provision. Adds new requirements that hearing decisions be based on a determination whether the child received FAPE and that procedural inadequacies can result in a finding that FAPE was not provided only if those inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making regarding FAPE, or caused a deprivation of educational benefits.
(i) IN GENERAL- Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.	
(ii) PROCEDURAL ISSUES- In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies--	
(I) impeded the child's right to a free appropriate public education;	
(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or	
(III) caused a deprivation of educational benefits.	
(iii) RULE OF CONSTRUCTION- Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.	
(F) RULE OF CONSTRUCTION- Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.	New provision. Nothing in 20 U.S.C. 1415(f) should be construed to prevent a parent from filing a complaint with the SEA under the State complaint procedures.
(B) LIMITATION- The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.	New provision. Creates a Federal default timeline of 90 days to appeal final State due process decisions to court, that applies unless the State has an explicit timeline for bringing such actions under Part B.
(C) ADDITIONAL REQUIREMENTS- In any action brought under this paragraph, the court--	No substantive change.
(i) shall receive the records of the administrative proceedings;	
(ii) shall hear additional evidence at the request of a party; and	
(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.	

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(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or	New provision. Incorporates, into IDEA, the standards of Fed. R. Civ. Pro. 11 and case law providing for public agencies to recover attorneys' fees from parents' attorneys if the case <i>was frivolous, unreasonable or without foundation or was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the costs of litigation.</i>
(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.	
(ii) RULE OF CONSTRUCTION- Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.	New provision. Nothing in 20 U.S.C. 1415(i)(3) should be construed to affect the attorneys' fees limitation in the FY 2005 DC appropriations bill.
(iii) OPPORTUNITY TO RESOLVE COMPLAINTS- A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered--	New provision. Attorneys' fees are not available for the resolution session meetings required by 20 U.S.C. 1415(f)(1)(B)(I).
(I) a meeting convened as a result of an administrative hearing or judicial action; or	
(II) an administrative hearing or judicial action for purposes of this paragraph.	
(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING- (1) AUTHORITY OF SCHOOL PERSONNEL- (A) CASE-BY-CASE DETERMINATION- School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.	New provision. Permits school personnel to consider <i>any unique circumstances on a case-by-case basis</i> when deciding to order a change in placement for a child violating a school conduct code.
(B) AUTHORITY- School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).	Essentially the same as prior (k)(1)(A)(I) permitting school personnel to move a child with a disability for not more than 10 school days for any violation of a school code of conduct.
(C) ADDITIONAL AUTHORITY- If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in	Similar to prior (k)(5)(A), permitting school personnel to discipline a child with a disability for the same length of time and in the same manner as nondisabled children for behavior found not to be a manifestation of the child's disability, except that the educational services must continue, although in another setting.

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20 U.S.C. 1412(a)(1) although it may be provided in an interim alternative educational setting.	
(D) SERVICES- A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall--  (i) continue to receive educational services, as provided in 20 U.S.C. 1412(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and	Similar to prior (k)(1)(A) and (B) and current regulations, that any child with a disability removed from the current placement for more than 10 consecutive school days must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum although in another setting, and continue to receive the services on the child's IEP and receive, as appropriate, functional behavioral assessment, behavioral interventions and modifications that are designed to address the behavior so that it does not recur.
(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.	
(E) MANIFESTATION DETERMINATION-  (i) IN GENERAL- Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--	Establishes a new standard for manifestation determinations – within 10 school days of any decision to change the placement of a child for discipline, the LEA, parent, and relevant members of the IEP team (determined by the parent and LEA) shall review all information to determine (1) <i>if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability</i> ; or (2) <i>if the conduct in question was the direct result of the [LEA's] failure to implement the IEP</i> .
(ii) MANIFESTATION- If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.	
(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or	
(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.	
(F) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION- If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall--	New provision. If behavior was a manifestation of the child's disability, the IEP team must conduct a functional behavioral assessment and implement a behavioral intervention plan for the child, or reviews an existing plan and modifies it as necessary to address the behavior. This provision also clarifies, as in current regulations, that if behavior is a manifestation, the child is returned
(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a	

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change in placement described in subparagraph (C) or (G);	to the placement from which he or she was removed for discipline, unless the parent and LEA agree otherwise.
(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and	
(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.	
(G) SPECIAL CIRCUMSTANCES- School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child--	Similar to prior (k)(1)(A)(ii), permitting school personnel to remove a child with a disability to an interim alternative educational setting, without regard to the manifestation determination, for not more than 45 <i>school</i> days for weapons and drugs offenses or if the child with a disability <i>has inflicted serious bodily injury upon another person</i> at school. <i>Serious bodily injury</i> is defined to mean a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;	
(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or	
(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.	
(H) NOTIFICATION- Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.	New provision. Similar to current regulations, that not later than the date of the decision to take disciplinary action, the LEA shall notify the parents of the decision and of the procedural safeguards available.
(2) DETERMINATION OF SETTING- The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.	Similar to prior (k)(3)(A), providing that the interim alternative educational setting, for removals of more than 10 school days for behavior that is not a manifestation or subject to 45-school-day removal, is determined by the IEP team.
(3) APPEAL- (A) IN GENERAL- The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.	Similar to prior (k)(2) and (6) that parents who disagree with a discipline decision regarding placement or manifestation and LEAs that believe that maintaining the current placement of a child is substantially likely to result in injury to the child or others, may request a hearing.
(B) AUTHORITY OF HEARING OFFICER-	Provides that hearing officers hear appeals and can order a

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(i) IN GENERAL- A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).	change in placement, return the child to the placement from which the child was removed, or order a change in placement for not more than 45 school days if the child is substantially likely to injure self or others in current placement.
(ii) CHANGE OF PLACEMENT ORDER- In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may--	
(I) return a child with a disability to the placement from which the child was removed; or	
(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.	
(4) PLACEMENT DURING APPEALS- When an appeal under paragraph (3) has been requested by either the parent or the local educational agency--	Similar to prior (k)(7)(A) that during an appeal, the child remains in the interim alternative educational setting until the decision of the hearing officer or expiration of the period of removal, whichever occurs first. This provision also requires that the SEA or LEA arrange for an expedited hearing, which shall occur within 20 school days of the request and result in a determination within 10 school days after the hearing.
(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and	
(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.	See above.
(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES-	A revision to prior (k)(8) to clarify that an LEA will be deemed to have a basis of knowledge that the child might be eligible if (1) the parent has expressed concern <i>in writing to supervisory or administrative personnel</i> of the agency or to a teacher of the child that the child needs special education; (2) the parent has requested an evaluation to determine eligibility; or (3) the teacher or other personnel had <i>expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of the agency or other supervisory personnel.</i>
(A) IN GENERAL- A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.	
(B) BASIS OF KNOWLEDGE- A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred--	
(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the	



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child, that the child is in need of special education and related services;	
(ii) the parent of the child has requested an evaluation of the child pursuant to 20 U.S.C. 1414(a)(1)(B); or	
(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.	
(C) EXCEPTION- A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to 20 U.S.C. 1414 or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.	Incorporates current regulatory language that an LEA will not be deemed to have a basis of knowledge if the parent has not allowed an evaluation or has refused services under Part B.
(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES-	Same as prior law 20 U.S.C. 1415(k)(9).
(A) RULE OF CONSTRUCTION- Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.	
(B) TRANSMITTAL OF RECORDS- An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.	
(7) DEFINITIONS- In this subsection:	Add to prior (k)(10) definitions of 'controlled substance', 'illegal drug' and 'weapon', a new definition of 'serious bodily injury' that means a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
(A) CONTROLLED SUBSTANCE- The term 'controlled substance' means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).	
(B) ILLEGAL DRUG- The term 'illegal drug' means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.	
(C) WEAPON- The term 'weapon' has the meaning given the term 'dangerous weapon' under section 930(g)(2) of title 18, United States Code.	
(D) SERIOUS BODILY INJURY- The term 'serious bodily injury' has the meaning given the	

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term 'serious bodily injury' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.	
(n) ELECTRONIC MAIL- A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.	New provision. Parents can elect to receive notices required by 20 U.S.C. 1415 through email, if the agency makes such option available.
(o) SEPARATE COMPLAINT- Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.	New provision. Clarifies that nothing in 20 U.S.C. 1415 prevents a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.
(d) DISPROPORTIONALITY-	Adds to prior 20 U.S.C. 1418(c) a requirement that States examine data at both the State and LEA levels [prior law just said 'in the State' and did not require examination of LEA data] and determine whether disproportionality on the basis of race and ethnicity is occurring in the incidence, duration and type of disciplinary actions, in addition to identification and placement as children with disabilities.
(1) IN GENERAL- Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of the State with respect to--	
(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in 20 U.S.C. 1401(3);	
(B) the placement in particular educational settings of such children; and	
(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.	Adds to the prior law, requirements regarding review of policies and procedures when significant disproportionality is identified. An LEA identified as significantly disproportionate must reserve the maximum amount of funds under 20 U.S.C. 1413(f) to provide coordinated early intervening services to children in the LEA, particularly from the group overidentified, and that the LEA report publicly on the revision of policies, practices and procedures.
(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES- In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall--	
(A) provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this title;	
(B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under 20 U.S.C. 1413(f) to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and	
(C) require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).	

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State